

1 Eric Ollason(AZ Bar #014860)
2 182 North Court Avenue
Tucson, Arizona 85701
(520) 791-2707
3 Attorney for Debtors

4
5
6

7 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF ARIZONA

8
9 In re
10 LAWRENCE J. WILSON and
LORETTA M. WILSON,
11

In proceedings under
Chapter 13
Case No. 4:09-bk-03879 EWH
Adv No. 4:09-ap-01133 EWH

12
13 LAWRENCE J. WILSON and
LORETTA M. WILSON,
14
15 Plaintiffs,
vs.
16 CITIMORTGAGE, INC., its successors and/or
assigns,
17
18 Defendants.
19

**COMPLAINT TO DETERMINE
SECURED STATUS**

20
21 Plaintiffs, LAWRENCE WILSON and LORETTA WILSON, Debtors in the above-entitled
22 bankruptcy proceeding, by and through their undersigned attorney, Eric Ollason, hereby allege as follows:

23 1. Plaintiffs have an interest in the real property ("the property") located at 10980 East Vuelta
24 Merecumbe, Tucson, Arizona 85730 legally described as:

25 **LOT 22 OF RANCHO CANCION WEST ACCORDING TO THE MAP**
RECORDED IN BOOK 48 OF MAPS, PAGE 71, RECORDS OF PIMA
COUNTY, ARIZONA AND THEREAFTER BY DECLARATION OF
SCRIVENER'S ERROR RECORDED IN DOCKET 10371 AT PAGE 895, IN
DOCKET 10976 AT PAGE 1829, IN DOCKET 1095 AT PAGE 1675 AND IN
DOCKET 11004 AT PAGE 3597.

1 2. Pursuant to a Note and Deed of Trust dated February 13th, 2006, Defendant, CitiMortgage, Inc., its
2 successors and/or assigns (“CitiMortgage”), alleges that Plaintiffs owe a debt to Defendant that has
3 a balance of approximately \$26,333.84. (Ex. A1 & A2).

4 3. CitiMortgage claims a security interest in the property.

5 4. This Court has jurisdiction to determine the secured status of Defendant pursuant to 11 U.S.C. §506.

6 5. The property is encumbered by a first position lien in the amount of \$307,343.22 also held by
7 CitiMortgage, Inc., its successors and/or assigns, evidenced by a Deed of Trust recorded in the office
8 of the County Recorder of Pima County and the proof of claim. (Ex. B1 & B2).

9 6. The current market value of the property is approximately \$290,000.00. (Appraisal of the property
10 by Certified Residential Real Estate Appraiser, George E. Shosted, dated February 16, 2009). (Ex.
11 C).

12 7. CitiMortgage’s 2nd mortgage claim is an unsecured claim because: (1) its Deed of Trust is junior to
13 the first Deed of Trust also held by CitiMortgage, its successors and/or assigns, and (2) the amount
14 of the loan secured by the first Deed of Trust is greater than the value of the residence, *i.e.*, the first
15 lienholder, CitiMortgage, its successors and/or assigns, has a secured claim of \$307,343.22, while
16 the value of the residence is \$290,000.00.

17 8. CitiMortgage (in second position) is unsecured to the extent of \$26,333.84. Therefore,
18 CitiMortgage (in second position) should be treated as an unsecured creditor for the entire amount
19 determined to be due Defendant.

20 WHEREFORE, Plaintiffs pray that this Court determine that Defendant CitiMortgage’s secured
21 interest (in 2nd position) in the subject property is non-existent; that Defendant CitiMortgage is an unsecured
22 creditor; and that the Deed of Trust in 2nd position executed by the Debtors to Defendant is discharged.

23 Dated this 3rd day of September, 2009.

24
25 /s/ Eric Ollason
26 Eric Ollason
27 Attorney for Debtor
28

1 Copy of the foregoing mailed this
2 8th, of September, 2009, to the following:

3 Dianne C. Kerns, Trustee
4 PMB #413
5 7320 N. La Cholla 154
Tucson, Arizona 85741

6 CitiMortgage Inc
PO Box 6941
7 The Lakes NV 88901-6941